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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

HELEN SOPHIA PURDY,

Defendant and Appellant.

C061471

(Super.Ct.No.
CM029146)

Defendant Helen Sophia Purdy slashed open the leg of a man who was standing outside a bar with a group of people. The gash was 14 inches long and penetrated nearly to the bone, gaping open four inches wide.

Defendant entered a negotiated plea of no contest to assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1); further section references are to the Penal Code unless otherwise specified) and other charges were dismissed, including those in a separate case against defendant.

The probation department recommended a state prison sentence. However, the trial court ordered a 90-day diagnostic study pursuant to section 1203.03. Both the diagnostic study and the supplemental probation report recommended denial of probation and a commitment to state prison.

Prior to sentencing, defendant filed a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118) and a motion to withdraw her plea. The trial court denied both motions, sentenced defendant to the low term of two years in state prison, with 355 days of custody credit (§ 4019), and ordered her to pay a \$600 restitution fine (§ 1202.4) and a \$600 parole revocation fine suspended unless parole is revoked (§ 1202.45).

Defendant appeals. Her request for a certificate of probable cause was granted. (§ 1237.5.)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief raising no cognizable issue or allegation of trial court error. Instead, she recites and discusses various laws, summarizes procedural occurrences in the trial court, and recites facts related to her crime. We have done our best to distill from defendant's supplemental brief what appear to be three general grievances.

First, defendant appears to complain that the trial court should have granted her *Marsden* motion. She claims her trial counsel was unprepared, did not adequately investigate the facts of the offense, did not give her copies of necessary discovery, did not correct errors in the probation report, and did not prepare her for her probation interview. The contention fails for the following reason.

"A defendant is entitled to have appointed counsel discharged upon a showing that counsel is not providing adequate representation or that counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [Citations.]" (*People v. Jones* (2003) 29 Cal.4th 1229, 1244-1245.) We apply the "deferential abuse of discretion standard" when reviewing the denial of a motion to substitute counsel. (*Id.* at p. 1245.) "'Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would 'substantially impair' the defendant's right to assistance of counsel.'" [Citations.]" (*People v. Hart* (1999) 20 Cal.4th 546, 603.)

At the hearing on the *Marsden* motion, defendant was permitted to set forth all her complaints about her trial counsel. Although the court specifically asked if she had anything else that she wanted the court to consider, many of the complaints she makes here on appeal were not raised at the hearing. When reviewing the trial court's ruling, we consider only those issues that defendant raised in the trial court.

Defendant complained that her trial counsel had not provided her with copies of all the discovery. But counsel told the court that he did give defendant copies of the discovery. The court found counsel more credible.

Defendant told the court that she wanted to proceed to a jury trial. However, counsel explained the facts and circumstances that he had discovered and why they caused him to recommend defendant accept the offered plea agreement. Having followed her counsel's advice (and having received a good disposition considering the facts of her crime and the fact she was facing other charges that were dismissed as part of the plea agreement), defendant cannot now claim that she should have had a jury trial.

Defendant also raised alleged errors in the probation report, to which counsel responded that he would seek to have any errors corrected if necessary. The record reflects that such corrections were made prior to sentencing.

Thus, the trial court did not err in denying defendant's *Marsden* motion.

Defendant also argues, in essence, that her motion to withdraw her plea should have been granted. Again, she does not set forth a basis for alleged error. Instead, she reiterates the argument she made to the trial court -- that her attorney failed to review the plea agreement with her, resulting in her belief that she was being promised probation and no prison time.

A trial court may allow a defendant to withdraw a guilty plea upon her showing of good cause based on clear and convincing evidence. (§ 1018; *People v. Cruz* (1974) 12 Cal.3d 562, 566.) Good

cause to withdraw a guilty plea includes “[m]istake, ignorance or any other factor overcoming the exercise of free judgment.” (*People v. Cruz, supra*, at p. 566.) However, defendant must establish that her free will was overcome, not merely that she had a change of heart. (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.)

A negotiated plea “should not be set aside lightly,” and “finality of proceedings should be encouraged.” (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.) We review for abuse of discretion the trial court’s decision to deny a motion to withdraw a guilty plea. (*People v. Holmes* (2004) 32 Cal.4th 432, 442-443; *People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) We adopt the trial court’s factual findings to the extent they are supported by substantial evidence. (*People v. Fairbank, supra*, at p. 1254.)

For her motion to withdraw her plea, defendant was represented by substitute counsel, William Short. He introduced the testimony of defendant, who said her counsel had promised that she would not go to prison. The prosecutor countered this testimony by introducing the written plea agreement, the transcript of the change of plea hearing, and the testimony of defendant’s previous trial counsel, Eric Ortner. The written plea agreement has the box next to the “no immediate state prison” provision crossed off and defendant initialed the box stating she had not been induced to enter the plea by any promise except striking the special allegation and dismissing a separate Butte County case. At the change of plea hearing, the trial court specifically asked defendant if she had received enough time to review the plea form and if she had had time to review it carefully with counsel. Defendant responded affirmatively to both these

questions. The trial court then asked her if anyone had promised her anything or threatened her, other than what was contained on the form, in order to get her to sign it. Defendant responded, "No." Attorney Ortner testified it was his practice to review all plea forms carefully with his clients. He also testified that neither he nor the prosecutor had promised probation as a result of defendant's plea. In denying defendant's motion to withdraw her plea, the trial court found "Mr. Ortner's testimony credible in that regard. It is corroborated by the plea form and by the transcript of the plea."

The trial court's factual finding that defendant was not misled into believing she would be granted probation with no initial prison time is supported by substantial evidence. Thus, the court properly denied defendant's motion to withdraw her plea.

On appeal, defendant also adds, as a new basis for withdrawing her plea, that trial counsel coerced her into accepting the plea agreement. Because she did not raise this claim in the trial court, we cannot consider it on appeal. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Finally, defendant disputes the facts underlying her crime, claiming she did not commit the offense. But her plea of no contest, which has the legal effect as a guilty plea (§ 1016, subd. 3; *People v. Robinson* (1997) 56 Cal.App.4th 363, 368), was an admission of guilt. (*People v. Turner* (1985) 171 Cal.App.3d 116, 125.) Having waived trial and admitted the crime, obviating the need for the prosecution to come forward with evidence to prove the charge, defendant cannot claim on appeal that she did not commit the crime.

Having independently examined the record, we find no arguable error that would result in a disposition more favorable to defendant.

The judgment is affirmed.

SCOTLAND, P. J.

We concur:

HULL, J.

BUTZ, J.